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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Mission to Portugal*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the right to adequate housing as a component of the right an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, on her mission to Portugal from 5 to 13 December 2016, pursuant to Council resolution 31/9.

* The present document was submitted late so as to include the most up-to-date information.

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, on her mission to Portugal**

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** Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, visited Portugal from 5 to 13 December 2016, at the invitation of the Government. The visit was conducted jointly with the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller.

2. The purpose of the visit of the mandate holder was to examine the implementation of the right to adequate housing through legislation, policies and programmes and to identify positive outcomes and remaining challenges to the enjoyment of the right to adequate housing at the national and subnational levels.

3. The Special Rapporteur visited Lisbon and Porto, and the surrounding areas of both cities. She thanks the Government of Portugal for its cooperation throughout her visit, and also the municipal authorities of Lisbon and Porto for their welcome and support. She also thanks the Parliamentary Committee on the Environment, Territorial Planning, Decentralization, Local Government and Housing, and the Ombudsperson (*Provedor de Justiça*) for the opportunity to meet.

4. The Special Rapporteur also expresses her thanks to the representatives of the civil society community organizations and networks, and the academics and experts, who shared information and insights with her. She is deeply appreciative of all the residents who met her in their homes and communities, who offered testimonies and explained their living conditions to her.

A. Overview

5. For over 40 years, until 1974, Portugal was under a dictatorship. The "carnation revolution" led to the restoration of a democratic system, and eventually to the adoption of a Constitution in 1975. Several colonies – Cabo Verde, Mozambique, Angola, Guinea, and São Tomé and Principe – became independent in the mid-1970s, effectively ending over five centuries of Portuguese empire. Portugal joined the European Economic Community in 1986, which was incorporated into the European Union in 1993, and the euro became its currency in 1999. Since 2007, Portugal has faced an unprecedented economic crisis that has been addressed through a number of austerity measures, with serious effects on the enjoyment of economic, social and cultural rights for persons in vulnerable situations.

6. In 2015, Portugal had a population of 10,341,330. According to the 2011 census, more than 61 per cent lived in urban areas, with more than 2.8 million (or 27 per cent) living in the Lisbon metropolitan area. According to government sources, owing to the economic crisis, emigration increased from 11,000 per year in 2000 to approximately 54,000 in 2013. The increase in emigration included low-skilled workers, including from the construction industry, seeking better jobs and living conditions elsewhere.[1] As in other European countries, the population in Portugal is steadily aging, and has had a negative growth rate since 2010. Between 2005 and 2015, the median age of the population rose by more than four years: in 2015, people 65 years or older represented 20.7 per cent of the population, or approximately 2 million people.[2] The age distribution of the population is

[1] David Justino, *Emigration from Portugal: Old Wine in New Bottles?* (Washington, D.C., Migration Policy Institute, February 2016), pp. 1-3.

[2] Eurostat, Population age structure by major age groups, 2005 and 2015 (% of the total population) YB16.png.

relevant to the housing sector, in particular in analyses of current and future housing needs and of housing policies, subsidies and other measures aimed at addressing trends towards housing exclusion.

7. With regard to income distribution, Portugal is also one of the most unequal countries in Europe.[3] According to the Organization for Economic Cooperation and Development (OECD), the bottom 10 per cent of the population accounts for only 2.4 per cent of the share of total income, the bottom 20 per cent accounts for only 6.9 per cent, while the top 20 per cent accounts for 41.5 per cent.[4]

8. The economic crisis, in Portugal has led to the downsizing of the public sector, high unemployment rates, a reduction in salaries, higher taxes, and more housing exclusion and homelessness. Unemployment rates have risen from 9.4 per cent in 2009 to 11.1 per cent in 2016, while youth unemployment (persons 15 to 24 years of age) more than twice as high, running at 20 per cent in 2009and almost three times as high (28 per cent) in 2016.[5] Despite a slight decrease in the past two years, unemployment remains dramatically high.[6]

9. The national poverty rate increased from approximately 18 per cent in 2009 to over 24 per cent by 2012. According to Eurostat data, the rate in 2015 stood at 19.5 per cent; while more than 11 per cent of the total population was at risk of poverty. The unemployed are clearly those affected by the greatest incidence of poverty. More than 40 per cent of persons unemployed lived below the 60 per cent of median income poverty line in 2012.[7] Employment does not necessarily protect against poverty, however; in 2015, 10.9 per cent of the working population was living below the poverty line.[8] Of those aged 17 or younger under, approximately 22 per cent lived below the poverty line.

10. With regard to housing, Portugal ranks 22nd of 28 countries in the European Housing Exclusion Index 2016, which considers, inter alia, five crucial indicators: housing cost overburden (spending more than 40 per cent of disposable income on housing); arrears on mortgage or rent payments; overcrowding; inability to keep home warm; and severe housing deprivation.[9]

B. Austerity measures

11. To address the economic crisis of the early 2000s, the Government of Portugal took a number of austerity measures that have had a significant impact on the enjoyment of the right to adequate housing and other socioeconomic rights. As part of a memorandum of understanding signed by the Government on 17 May 2011 with the International Monetary Fund, the European Central Bank and the European Commission and that formally ended in

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[3] Jens Arnold and Carlos Farinha Rodrigues, Reducing Inequality and Poverty in Portugal, Economics Department Working Papers No. 1258, Organization for Economic Cooperation and Development (OECD), p. 5.

[4] OECD, Inequality remains high in the face of weak recovery, November 2016, table 1. Key indicators.

[5] Instituto Nacional de Estadistica – Statistics Portugal (INE), Monthly Employment and Unemployment Estimates, 4th Quarter of 2009, Destaque press release, 7 February 2010.

[6] INE, Portugal, Monthly Employment and Unemployment Estimates, November 2016, Destaque press release, 6 January 2017.

[7] Arnold and Rodrigues, "Reducing Inequality and Poverty" (see footnote 3), p. 11.

[8] Ibid.

[9] See FEANTSA and Fondation Abbé Pierre, An Overview of European Housing Exclusion in Europe, Index 2016, 17 September 2016.

June 2014, Portugal received a loan of 78 billion euros.[10] Among the conditions attached to the loan were a series of austerity measures that, by their nature, resulted in an increase in poverty levels, lower social protection benefits, higher rates of homelessness and unaffordable housing, utilities and other public services.

12. The stated objectives of the memorandum of understanding were to "improve households' access to housing; foster labour mobility; improve the quality of housing and make better use of the housing stock; reduce the incentives for households to build up debt." It also incorporated specific conditions relating to the rental market, the management of housing stock, property taxes and administrative procedures for the eviction of tenants in relation to renovation work.

13. The above-mentioned measures included the amendment of the New Urban Rental Regime (Law No. 6/2006) "to ensure balanced rights and obligations of landlords and tenants, considering the socially vulnerable". Accordingly, the reform introduced measures (a) to broaden the conditions under which open-ended residential leases could be renegotiated; (b) to phase out rent control mechanisms; (c) to reduce the prior notice for termination of leases for landlords; (d) to provide for an extrajudicial eviction procedure for breach of contract, aiming at shortening the eviction time to three months; and (e) to strengthen the use of existing extrajudicial procedures for cases of division of inherited property.

14. The memorandum of understanding also required simplified rules for the temporary relocation of tenants for rehabilitation works, allowing landlords to terminate lease contracts for major renovation works with a minimum of six months' notice.

15. Each of the above measures has a potential bearing on the enjoyment of the right to adequate housing. Unfortunately, social and human rights impact assessments were not conducted prior to the adoption of austerity and other measures in the housing sector; furthermore, human rights principles and standards were not included in the memorandum of understanding.

16. The central goal of austerity measures was to reduce the budget deficit. In an attempt to curve the negative impact of the measures, the Government informed the Special Rapporteur about some programmes that were introduced, such as the Social Emergency Plan (PES-2012), including the Social Market for Renting (MSA, sect. 5c) giving access to housing at 20 to 30 per cent below market rates; and law no. 58/2012 creating a regime to protect mortgage debtors and requiring financial institutions to restructure loans for persons in serious financial difficulty. The Special Rapporteur did not receive information attesting to the extent to which these programmes had been beneficial to those most in need. Moreover, because these programmes are aimed at those living in poverty, they do not address the housing needs of the "new poor" struggling with mortgage and rent arrears, loss of employment, wage freezes, increased taxes and lower pensions.[11]

[10] Since June 2014, Portugal has been under post-programme surveillance until at least 75 per cent of the financial assistance received has been repaid, possibly until 2026.

[11] See the statement by the Committee on Economic, Social and Cultural Rights on public debt, austerity measures and the International Convention on Economic, Social and Cultural Rights (E/C.12/2016/1), para. 3.

II. Legal framework

A. International human rights law

17. Internationally, Portugal is a champion of international human rights law, in particular with regard to economic, social and cultural rights, and is party to most core international human rights treaties. In 1978, it ratified the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The International Covenant on Economic, Social and Cultural Rights provides for the right to an adequate standard of living, including housing (art. 11), and for the right to non-discrimination and equality (arts. 2 and 3). Article 2.1 guarantees the progressive realization of all rights making use of the State's maximum of available resources with a view to ensuring the enjoyment of the right to adequate housing and other human rights.

18. In 2013, Portugal became one of the first countries to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which provides for an international individual complaint mechanism for violations of the rights in the Covenant, in particular the right to adequate housing.

19. Portugal ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1980, the International Convention on the Elimination of All Forms of Racial Discrimination in 1982, the Convention on the Rights of the Child in 1990, and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto in 2009 (E/C.12/PRT/4).

20. Consequently, Portugal has binding international human rights obligations to protect the enjoyment of the right to adequate housing without discrimination on any ground, to avoid retrogressive measures, and to provide mechanisms for access to effective remedies and justice in relation to these rights.

B. Constitutional law

21. Article 65 of the Constitution of Portugal is a progressive provision that enshrines the right to adequate housing, stating that "everyone has the right, for himself and his family, to have an adequately sized dwelling that provides hygienic and comfortable conditions and preserves personal and family privacy". It establishes the responsibilities of the State in the areas of (a) programming and implementation of housing policy, within urban plans that "guarantee the existence of an adequate network of transport and social facilities"; (b) the promotion of the construction of low-cost and social housing in cooperation with local authorities; (c) stimulus for both home ownership and rentals; and (d) support for community initiatives to resolve housing problems, including the creation of self-building cooperatives. Article 65 concludes with a description of the need for the State to adopt a policy establishing "a rental system that is compatible with family incomes and that provides access to individual housing".

22. Surprisingly, Portugal does not, despite such a strong constitutional provision, have corresponding legislation, such as a national housing framework law. The Special Rapporteur was informed by some government officials that this had not obstructed the existence of adequate housing policies in the country. She was led to believe that, instead of adopting overarching legislation, the system is characterized by the approval of concrete policies articulated among each other in all sectors, and that the housing sector was not an exception. Civil society organizations, and some local government officials and academics, were of the opinion that the lack of framework legislation guiding the implementation of

the right to adequate housing was a much needed instrument. In follow-up to the end-of-mission statement, the Government acknowledged that due consideration could be given to a framework law on housing, and that it could serve to enshrine the principles of action in this sector, taking into account potential gaps that would need to be identified.

III. Right to adequate housing

A. Overview

23. Portugal is a centralized State with 308 municipalities and two autonomous regions (Azores and Madeira). Each level of government bears responsibility for housing; the role of the central government comes predominantly in the form of cash transfers, and the formulation of national laws, programmes and standards, while municipalities are responsible for their implementation, and for providing resources to supplement those provided by central government.

24. The housing sector has particular characteristics that have an impact on the implementation of the right to adequate housing. Portugal boasts exceptionally high home ownership rates for the European region (75 per cent of the population in 2013). In 2011, there was a housing stock of approximately 5.9 million conventional dwellings, but only some 4 million families in the conventional housing sector, meaning there was no shortage of housing.[12] Between 10 and 12 per cent of units stand vacant and/or are slated for demolition, 3.4 per cent of which are dilapidated and uninhabitable. In 2011, it was estimated that 132,656 units of housing were needed: 6,612 (5 per cent) households living in "non-conventional" dwellings;[13] 3,373 (2 per cent) classic families resided in hotels and similar or in unions; 42,009 (32 per cent) families shared accommodation with others; and 80,662 (61 per cent) for the minimum reserve of the housing market. Between 2001 and 2011, Portugal made significant progress in reducing the amount of housing needed (by 22 per cent) by a concerted effort to resettle those living in non-conventional dwellings.[14]

25. As a result of the priority given to home ownership, the rental sector is limited: only 2 per cent of all housing stock is allocated to social housing, one of the lowest rates in Europe. Rental as a long-term alternative to ensuring access to affordable and well-located housing is no longer the preferred tenure system in Portugal. This represents a significant change in the structure of the housing sector: in 1970, rentals accounted for almost 46 per cent of the total of main household residence; in 2011, this figure had dropped to around 20 per cent.

26. Until recently and for several decades, Portugal had stringent rental legislation that fixed rental rates regardless of income levels and market value of the unit; rental contracts could also be included in inheritance. In central locations in Lisbon and Porto, many were paying very low rents and had old rental contracts. In turn, it was common for landlords to neglect and abandon properties, and to avoid carrying out even the most basic maintenance, renovation and conservation of buildings, units and common areas because they did not generate enough income. Many such units were derelict and in urgent need of rehabilitation.

[12] INE, Housing rehabilitation: an overview 2001-2011, p. 29.

[13] INE defines conventional dwelling as a room or suite of rooms and its accessories built, rebuilt or converted for habitation by one household. It should have separate access to a street or to a common space within the building.

[14] INE Housing rehabilitation (see footnote 12), p. 29.

27. From the late 1970s until 2008, housing construction surged in Portugal; the number of houses nearly doubled, and at access to credit for housing at low interest rates was more readily available. According to Statistics Portugal, between 1990 and 2001, the number of tenants decreased from 61 to 24 per cent. By the end of the 1990s, between 20 and 25 per cent of the labour force – including unskilled workers who had migrated from rural areas to the cities, and migrants from former colonies in Africa – were engaged in construction. Today, that figure stands at approximately 9 per cent.[15] Since 2002, and despite the slowdown in new housing construction, the number of new housing units is still higher than the number of housing rehabilitated.

28. With regard to access to services and infrastructure, an important element of adequate housing under international human rights law, the European Housing Exclusion Index for 2016 shows that approximately one in four people in Portugal has serious problems in keeping their home adequately warm (23.8 per cent in 2015), almost three times higher than in the rest of the European Union. Severe housing deprivation is an issue of concern, especially for young people between 20 and 29 years, and dramatically increases the risk of homelessness.

29. Under international law, for housing to be adequate it must be affordable, particularly for those living in poverty. In 2015, 33.5 per cent of poor households lived in unaffordable situations, and were thus at risk of falling into arrears or mortgage foreclosure, a 3 per cent increase in just two years. According to information received by the Special Rapporteur from INE, 11 per cent of people living in poverty live in severe housing deprivation, and almost 10.3 per cent (21 per cent of whom are poor) live in overcrowded households.

B. National housing policies

30. The national housing strategy for the period 2015-2030, which is operational in nature, is aimed at ensuring access to housing for families, on the basis of three thematic cornerstones; urban rehabilitation, housing rent, and the rehabilitation of housing (contributing to social inclusion and to the protection of the most marginalized). The connection of the strategy to other housing policies and its relevance is unclear.

31. The Institute for Housing and Urban Rehabilitation (Instituto da Habitação e da Reabilitação Urbana, or IHRU)) is in charge of implementing of the housing and urban rehabilitation policies of the central Government, particularly for low-income families. To this end, it provides grants and loans, with or without subsidies, to public, private and cooperative institutions. Where necessary, IHRU provides guarantees for social housing and urban rehabilitation financing operations, and may participate in companies, real estate investment funds, consortiums, public-private partnerships and other forms of association that pursue urban rehabilitation.

32. Portugal also has in place several programmes and policies to address specific housing challenges, reduce housing shortage, and regulate the interaction and functions between the national Government and the autonomous regions and municipalities responsible for housing.

33. The Housing Access Financing Programme (Programa de Financiamento para Acesso à Habitação, or PROHABITA) has been in place since 2004. Its objective is to support families with serious housing difficulties by providing cost-controlled housing,

[15] Banco de Portugal, Nota de Informação estatística 126, 2016, Análise do setor da construção, 2011-2016, 5 December 2016.

rehabilitation and the transformation of buildings into social facilities in social housing neighbourhoods, and financial support to households for rehousing in the event of natural disaster or emergency situations (see E/C.12/PRT/4, para. 202). The Special Rapporteur was informed that the programme had received for 2017 only a small budget allocation of 5.5 million euros – which the Government admits is low – after several years without funding. It is not clear whether the resources allocated under the programme will be sufficient to address the needs identified.

34. The Special Rehousing Programme (Programa Especial de Realojamento, or PER)[16] targeted people in the metropolitan areas of Lisbon and Porto living in "non-conventional" dwellings. Launched in 1993, the programme provided financial support for construction, acquisition and rental. Grants were received by municipalities, municipal public enterprises, private social security institutions and housing or construction cooperatives. The programme was based on the resettlement needs identified in a universal survey conducted between 1993 and 1995. According to IHRU, 48,416 households were identified in the survey, of which 34,494 were resettled under the programme, while 10,621 found their own housing solutions. Of the housing units built under the programme, 22,672 are located in the Lisbon metropolitan area and 11,822 in the Porto metropolitan area. Most resettlement was concentrated on the outskirts of city centres, resulting in the relative isolation of these communities, far from other services and livelihood opportunities. Little resettlement has been witnessed in the past 20 years, which has meant that those who were not included in the survey continue to live in "non-conventional" dwellings and are at imminent risk of eviction or house demolition. IHRU estimates that 3,301 families remain in need of resettlement. New immigrants to Portugal from its former colonies often have no alternative but to live in these areas.

35. About 57 per cent of the population between 18 and 34 years of age continue to live with their parents, mostly owing to unemployment, low wages and the temporary nature of many work contracts. The Porta 65 Jovem programme provides financial support for rental accommodation for people up to the age of 30 years. Under the programme, private landlords receive a rental supplement for a period of up to three years, assigned monthly.

36. In order to stimulate the urban rental market, and as part of the memorandum of understanding, the New Urban Rental Regime (Novo Regime de Arrendamento Urbano) was introduced in August 2012. The law governing the initiative was adopted with the aim of modernizing what was perceived as a rigid rental market that had emerged over several decades. The new regime comprised a number of changes, including the elimination of provisions for a mandatory 5-year minimum duration of fixed-term agreements; reduction of the minimum period of notice for the termination of an agreement from five to two years; the liberalization of rent increases (introduced over a five-year period, ending in 2017), regardless of previous agreements, except in the case of persons older than 65 years or persons with a degree of disability in excess of 60 per cent.

37. The new rental regime included a "fast-track" eviction procedure, based on the online National Rental Counter (Balcão Nacional de Arrendamento, or BNA), administered by the Ministry of Justice. The procedure is an extrajudicial mechanism, although it may, under certain circumstances, be transferred to the courts.[17]

38. Some concerns have been raised about the New Urban Rental Regime, in particular with regard to the ease with which evictions can be carried out. If tenants do not dispute the

[16] Decree-law no. 163/93 of 7 May 1993, amended by decree-law no. 271/2003 of 28 October 2003.

[17] See Décio Correia and Nelson Santos, Tenancy Law and Housing Policy in Multi-level Europe, National Report for Portugal, 2015, p. 87.

eviction and demand a hearing, they can be evicted through administrative procedures without a hearing and in a short period of time. Persons living in a vulnerable situation may experience multiple barriers should they decide to appeal against an eviction, ranging from lack of knowledge of the procedures to lack of time or money, or of legal aid. Moreover, under the former regime, tenants benefited from strict, long-term rent control, in which case many paid a nominal sum each month. For those falling outside the transition phase categories, the dramatic increase in rent to market values has been experienced as an unmanageable shock, especially for those unentitled to social benefits.

39. The national Parliament has approved general aspects of proposed amendments to the regime in two bills to enhance protection for vulnerable tenants. Bill 155/XIII introduces an amendment to protect tenants who are 65 years old or older and persons with a degree of disability in excess of 60 per cent receiving an annual gross fixed income that is lower than five annual national minimum wages, by extending the transition period from 5 to 10 years for those with pre-1990 housing contracts and non-housing contracts prior to 1995, limiting the increase in rent. Bill 310/XIII/2 also aims to extend the transition period from 5 to 10 years, but differs in scope by protecting all tenants in the lowest income segment, regardless of the persons age or degree of disability. The Special Rapporteur was not informed of when the amendments would be decided upon or about the likelihood of their adoption.

40. Some initiatives being developed by the Government suggest that efforts are being made to find affordable alternatives to rental accommodation, such as the Rehabilitation for Renting programme (Rehabilitar para Arrendar), the Rehabilitation for Renting programme, and the New Affordable Rental Market. In the latter case, landlords are incentivized to rent below market rates in exchange for fast-track dispute settlements or tax benefits. Although the Special Rapporteur recognizes that these programmes may lead to positive outcomes, she notes that there have not yet been any specific outcomes to be assessed. She also notes that programmes like BIP-ZIP, in Lisbon, which provides direct support and funding to local organizations and *freguesias* (parishes) have yielded positive results since 2011, and that similar programmes should be encouraged and funded.

C. Issues in focus

1. Evictions, demolitions and informal settlements

41. Forced evictions are a gross violation of international human rights law, and therefore prohibited. In the light of their repercussions on human rights, they are justified only in the rarest and most exceptional of circumstances, and in strict compliance with existing international human rights norms and guidelines.

42. In 2011, there were approximately 6,612 "non-conventional" dwellings in Portugal, less than 0.11 per cent of all dwellings The lack of social housing and of a rent supplement programme, or other private market access-to-housing solution for people living in poverty, means that these populations – the Roma, persons of African descent, persons with disabilities, and single parents – often have no choice but to stay in informal settlements, in the worst conditions, or to rent the least expensive (yet not always affordable) units on the private market, many of which offer grossly inadequate conditions. The informal settlements of the Roma and people of African descent are examples.

43. Informal settlements such as those in Loures, where Roma and people of African descent are forced to live, are a shameful blight. Some communities live without electricity. Their homes are set amidst garbage, are dark, poorly constructed out of tin and debris, and exposed to rain, wind and overheating in the summer months. These are housing conditions that one hopes never to see, and certainly not in a developed country that has ratified

international human rights instruments protecting the right to adequate housing. Contrary to international human rights law, a number of families have been evicted from their homes in Amadora municipality, or have had their homes demolished, and as a consequence were left homeless (see A/HRC/31/54). The Special Rapporteur heard testimonies from a number of individuals who were forced to live in a shelter, or to move in with friends or relatives, and feared street homelessness. The Special Rapporteur also learned that some people actually chose to sleep in cars or in other improvised solutions because of the importance of remaining in their neighbourhood and with their community.

44. In other parts of the municipality, households that have been standing for more than 30 years, which have contributed to community development (for example, by naming their own streets with hand-painted signs), continue to live in fear of eviction or demolition because they reside on land that the Municipality would like to develop owing to increasing value. Residents require, in accordance with international human rights law and standards, in situ security of tenure (see A/HRC/25/54). Officials from the Municipality of Amadora were unfortunately unable to receive the Special Rapporteur during her visit to the site.

2. *Ilhas*

45. *Ilhas* are a unique form of housing found only in Porto. Established in the nineteenth century for workers, these miniature homes, measuring on average 16 m^2, house some of the poorest families in Porto. Hidden from view, the *ilhas* are located down narrow lane ways. There are 957 of these housing arrangements scattered throughout Porto. The vast majority are owned privately, and tenants pay rent to landlords who are often absent.

46. Living conditions in most *ilhas* are grossly inadequate, contrary to international human rights standards, and can only be described as heartbreaking. Although they can barely accommodate one person, most are occupied by families of three or four. Many have ad hoc sanitation facilities, sometimes outside of the actual home, or without doors for privacy or a place to wash. While most have electricity and running water, some are off the grid and have no electricity security, and constantly face the risk of blackout. Many of the homes have leaking roofs, are infested by rodents, and offer scant protection from elements. Several tenants with whom the Special Rapporteur met said that they had requested the landlord to make repairs to their units, but in vain.

47. One deep concern is the number of older people living in these homes, many with a disability or limited mobility, are completely isolated, and rarely able to leave, except for medical appointments. Another serious concern is that a number of residents, including single mothers, have been told that their children may be taken away by welfare authorities owing to their housing conditions, despite the fact that no alternative housing has been made available to them. Many tenants have little to no income beyond a small pension or a low social integration income (181 euros per month in 2016, though varying according to the household composition), and most have been on waiting lists for social housing for years.

48. The Special Rapporteur also visited *ilhas* that are currently being rehabilitated by the Municipality of Porto. While this programme is small (concerning just three *ilhas*), it is a positive development that, if properly financed, could be a solution for many more residents.

3. Homelessness

49. Homelessness is a gross violation of the right to adequate housing under international human rights law and, as such, must be addressed as an immediate priority (see A/HRC/31/54). All stakeholders, including the Government, agree that the overall number of homeless individuals is unknown. Estimates vary widely from 4,000 to 50,000,

suggesting there is no firm grasp of the extent of the problem and no consistent methodology to count homeless persons. Without a more accurate picture of the population of the homeless – not just numbers but their needs – it will be difficult to address their situation effectively. The composition of the current homeless population seems to have changed as a result of the financial crisis, with more young adults facing homelessness than in past decades, owing to the high rates of unemployment and the lack of affordable housing. Some regional variations are known; Porto, for example, has a larger per capita rate of homeless persons than Lisbon.

50. The first National Strategy for the Integration of Homeless Persons (Estratégia Nacional para a Integração de Pessoas Sem-abrigo) for the period 2009-2015 has been praised as a strategy based on the right to housing, with the explicit aim of addressing social exclusion. The goals of the strategy are based on two axes: (a) information, fighting against discrimination, and education; and (b) decision-making with regard to interventions (see HRI/CORE/PRT/2014). Coming from a country that in recent decades has had to come to terms with a number of important social and economic transformations, without a robust or long-established welfare system, it is exceptional to witness a strategy that views homelessness as "a consequence of a wide range of individual, organisation and structural hindrances, rather than simply a housing or a social problem."[18]

51. The process that led to the development of the above-mentioned strategy is considered highly effective and participatory, ensuring opportunities for the engagement of a wide-range of local organizations and authorities to raise views through, for example, a comprehensive questionnaire. More than 2,100 homeless people were interviewed and their views considered. As a result, it was possible to develop a nuanced view of the situation, understanding that homelessness is not just "rough sleeping", but also comprises living in unconventional settings, such as cars and abandoned buildings, situations of emergency accommodation, and temporary accommodation in pensions or rented rooms. Priority cities for intervention were Braga, Porto, Aveiro, Coimbra, Lisbon, Setubal and Faro.[19] The strategy helped in the development of a common definition of homelessness, and promoted better coordination among services.

52. Several stakeholders recognize that the development and adoption of the strategy, the first of its kind in southern Europe, has led to positive change in encouraging local responses to homelessness. The Special Rapporteur was encouraged to learn that some municipalities, such as in Porto, had undertaken activities that went well beyond those proposed by the strategy.

53. Several obstacles have, however, stood in the way of the full implementation of the strategy, in particular the lack of transparency in resource allocation, weak horizontal coordination at the State level, and a failure to implement monitoring and evaluation mechanisms.[20] Furthermore, an evidence-base assessment of the impact of the measures does not seem to have been made; an assessment of this type would, however be particularly useful, given that a new strategy is expected to be developed and implemented in the near future. Also, it was noted that a new strategy ought to give more importance to the prevention of homelessness and to ensuring that mechanisms to break the poverty cycle such as job training and alternatives for income generation, are embedded in it.

[18] Isabel Baptista, "Strategically Moving Forward in Combatting Homelessness in Spain", *European Journal of Homelessness*, vol. 10, No. 2, December 2016, p. 94.

[19] Ibid.

[20] Ibid., p. 96.

4. Social housing

54. In all of Portugal there are only 120,000 social housing units, a figure that seems rather low in the light of the national poverty rate. A total of 12,285 units are managed by IHRU, while the rest are owned and managed mainly by various municipalities and, to a small extent, by other entities. The city of Lisbon provides the greatest amount of social housing in Portugal (26,000 units). Waiting lists for social housing are long; for example, according to IHRU, approximately 4,000 households applied for a unit in 2016. The average waiting period is two years. The Special Rapporteur learned, however, that, in the municipalities of Lisbon and Porto, the wait can be as long as seven years for some categories of units.

55. One of the key social housing projects in Portugal is run through the PER) established for the metropolitan areas of Lisbon and Porto (see para. 33 above). As described above, the main objective of the programme is to provide resettlement to households living in "non-conventional" dwellings, such as *barracas* (shacks) or self-built homes made of perishable materials, on either public or private land, for Roma communities living in camps or other communities, such as persons of African descent living in informal settlements. Under the programme, municipalities acquire buildings or dwellings, which they refurbish for the relocation of households included in the 1993/95 survey (see para. 34 above).

56. Under the PER programme, 17,000 social housing units have been built, for the benefit of thousands of households. Because the units have been built as enclaves on the outskirts of cities, however, there is concern that the programme has led to ghettoization and social exclusion, owing also to a lack of efficient forms of transportation to city centres.

57. In Lisbon, the Special Rapporteur visited social housing that was in a serious state of neglect and disrepair. In one particularly derelict neighbourhood, built 16 years ago, beneath the flight path of the airport nearby, buildings were crumbling, with cracked foundations and walls, exposed wiring, sewage problems, a lack of recreational areas for children, and dirty, poorly lit common areas. In some cases, empty units were simply boarded-up, unused despite exceptionally long waiting lists. The Special Rapporteur was also informed that lack of sufficient social housing had led to overcrowding. According to INE, in 2012, the proportion of overcrowded primary residencies in Portugal represented 11 per cent of total housing.

58. The Special Rapporteur was unable to find reliable information on the percentage of national and municipal budgets allocated to the maintenance and construction of social housing. In keeping with the memorandum of understanding, the focus of policies and programmes implemented by the Government and municipal authorities is on the creation of private, market-based housing options for the working poor. The Special Rapporteur was informed that, in Porto, not a single new unit of social housing had been built since the 1990s. This was explained as being related to a lack of available resources, and also to the priority given to rehabilitation of existing housing stock.

59. The Special Rapporteur was pleased to learn that changes to the eligibility criteria for social housing and the manner in which housing was allocated were under way in Lisbon, although it is difficult to determine whether the new system will result in faster placement of tenants in social housing or whether it will address shortages in its supply.

60. Under international human rights law, social housing is certainly not the only reasonable response to housing deficits; in the light of the socioeconomic and demographic composition of Portugal, it could surely be part of the answer.

5. "Touristification" and short-term rentals

61. Tourism is essential to the economic recovery of Portugal, and a key source of income for many households. The historic centres of Lisbon and Porto are today major tourist destinations. The revitalization of historic city centres (particularly in Porto, which was characterized by its dilapidated and abandoned buildings, and reportedly high rates of drug use and violence), is a positive development. Although the centre of Porto was declared a UNESCO World Heritage site 20 years ago, significant touristic flow has increased only in recent years.

62. In this context, short-term rentals mostly for tourists have increased significantly in recent years, the result of a combination of factors. First, the adoption in June 2008 of an administrative rule, Portaria 517/2008, allowing for rental of apartments, houses and rooms for temporary accommodation; second, as a result of the New Urban Rental Regime, which allows the eviction of existing tenants where a building is to be renovated, more owners are investing in renovations then leasing out their properties on a short-term basis in order to recover expenses as swiftly as possible; and third, the increases in the tourist industry in Portugal, especially in Porto and Lisbon.

63. Turismo de Portugal is in charge of maintaining a national registry of local accommodation (RNAL). According to figures provided by the Government, 31,339 properties had been registered for local accommodation or short-term rental in mainland Portugal, only 0.55 per cent of total housing stock. In addition, only a few neighbourhoods in the historic centres of Lisbon and Porto have more than 10 per cent of their housing stock devoted to short-term accommodation.

64. Short-term rentals, especially when they become the primary form of occupation of specific neighbourhoods, can weaken community networks and the social fabric of a city, which in turn undermines the promotion of long-term rental as an essential tenure system for local residents. Indeed, a study conducted in November 2016 found that rental prices had increased considerably in recent years. The study also found that the number of officially registered short-term rentals and those advertised on digital platforms (such as Airbnb) was unreliable, which made it difficult to regulate requirements, collect taxes or collect data necessary for human rights compliant decision-making.

65. Unbridled "touristification" can have other negative effects on the enjoyment of the right to housing for the most vulnerable populations. When landlord choose to sell or to renovate their property, many families may be displaced from their neighbourhoods owing to lack of affordable housing elsewhere, or are more easily evicted in the process. The Special Rapporteur observed that some property owners, particularly in the historic centres of Lisbon and Porto, are choosing either to renovate their properties or to convert them to luxury rental units for short-term rental, or are selling their properties to foreign investors, who often do the same. Since nightly rates are, on average, more affordable than those for a hotel room but more lucrative than long-term rental prices, it creates an incentive for property owners to convert their homes or buildings accordingly, which in turn reduces the stock of available units and causes the price of housing in those neighbourhoods to rise. The Special Rapporteur was informed that, in some areas, rents had actually doubled in only a short period of time, making them unaffordable to many families, especially to those who rely on social support.

66. The Government has taken some steps to curb the proliferation of short-term rentals by taxing, at a higher rate, developers and the property owners who create them. The Special Rapporteur understands that the Government has also introduced a programme that subsidizes rent in the historic city centres so that those living below the poverty line (less than 439 euros/month) pay between 30 and 40 per cent less than the current market rate.

While such regulations are welcome, there is certainly more that should be done to ensure city centres do not become an enclave for the wealthy and for foreigners.

67. The Special Rapporteur is mindful that, for the most part, those who offer rental accommodation are small landlords offering a single unit as an important source of their household's income. She was also informed, however, that real estate agents and corporations take advantage of loopholes in laws and regulations to buy up and control a significant share of the short-term rental market.

6. Golden visas

68. With regard to foreign investment and the "financialization" of housing (see A/HRC/34/51), Portugal has introduced a scheme for "golden" visas (law No. 29/2012). Under the scheme, eligibility criteria can be met with the purchase of real estate property with a value equal to or greater than 500,000 euros; the purchase of older properties located in urban regeneration areas for refurbishing, of a total value equal to or greater than 350,000 euros; or capital investment of 1 million euros or an investment that creates 30 jobs. Of the 1,888 visas issued between October 2012 and September 2016, 3,669 were given to third-party nationals acquiring real estate; only six were given to investors who created jobs. Although these investments account for only 0.06 per cent of housing stock in Portugal, the scheme brought in 2.37 billion euros, of which 2.14 billion from the purchase of real estate, putting pressure on the overall cost of housing in the country.

69. Despite the huge influx of capital, the golden visa scheme has not, in the view of the Special Rapporteur, proven to be beneficial to the people most in need in Portugal. It has not resulted in the creation of jobs, and not even a portion of its yields has been applied to develop affordable housing. In fact, the scheme, alongside other factors such scarcity of long-term rentals, easier access to credit to purchase housing for some, and low interest rates, may have exacerbated affordability issues for middle- and low-income households. Housing and rental prices are escalating at a rate that causes concern throughout urban centres. According to the figures released by Statistics Portugal, for example, in the period 2015-2016 alone, urban areas in Portugal witnessed a 5 to 10 per cent increase in real estate prices (such as in Amadora: 9.4 per cent; Porto: 7.2 per cent; and Lisbon: 5.2 per cent).[21]

IV. Discrimination and social exclusion

A. Roma (Ciganos)

70. Portugal has constitutional limitations on the collection and disaggregation of data on several grounds, such as religion or ethnic origin (art. 35.3). The Roma community is variously estimated to have between 4,000 and 60,000 members. Most members of Roma communities (commonly referred to as *Ciganos*) are Portuguese citizens, and live on the coast and in Lisbon, Porto, Faro and Santarém.[22]

71. The National Roma Communities Integration Strategy (2013-2020), implemented by the High Commission for Migration, was difficult to develop owing to the scarcity of information on such issues as housing and living conditions, education, health and

[21] "Portuguese house prices continue to rise as its economy recovers", Global Property Guide, 21 March 2016.

[22] Maria Helena Torres et al., Discrimination of Roma Communities: Portugal National Report, EAPN and ACIDI, Net-Kard Project, 2012, pp. 6-7.

employment. A broad study that was subsequently conducted found that housing conditions of Roma communities were particularly inadequate: approximately 31 per cent of the Roma population were living in a vulnerable situation, in substandard housing conditions, often in informal settlements consisting of barracks, shacks or tents, or in derelict housing units rented on the private market.[23] Roma communities, mainly comprising individuals and households not resettled under the PER programme, currently live in marginalized neighbourhoods, distant from city centres and without services or access to employment. The situation compounds existing physical, social and accessibility barriers, and in some cases leads to the emergence of interethnic conflicts.

72. The Special Rapporteur was informed that the integration strategy was the first targeted public policy for Roma. Its main objective is to strengthen practices that promote the integration of Roma communities in several areas, including housing. The strategy is used to tailor housing solutions, for example, by determining eligibility for resettlement and promoting access to the rental market and private property without discrimination.[24]

73. The Committee on the Elimination of Racial Discrimination recently expressed concern about Roma continuing to face discrimination in access to housing, and recommended that special measures be taken to improve housing conditions (CERD/C/PRT/CO/15-17). Similarly, in 2014, the Committee on Economic, Social and Cultural Rights reported concerns that waiting lists for social housing were long and that many Roma did not meet the eligibility requirements for social housing under the Special Rehousing Programme (see para. 33 above) as they had not been included in the census conducted in 1993 (E/C.12/PRT/CO/4).

B. People of African descent

74. The Special Rapporteur is concerned at the exclusion and discrimination experienced by some persons of African origin, largely from former Portuguese colonies, such as Angola, Cabo Verde and Mozambique, who are also among the poorest and most deprived in terms of access to adequate housing. People of African descent coexist with Roma in informal settlements, where they are forced to live in grossly inadequate conditions, marked by the lack of sufficient available social housing and of a rent supplement programme, or any other private market access-to-housing solution for those living in poverty.

75. The Committee on the Elimination of Racial Discrimination underlined its concern that, despite the long presence of Africans and persons of African descent in Portugal and their contribution to the development of the country, they were still subjected to racism, with no programmes specially targeting their concerns, including with regard to housing (CERD/C/PRT/CO/15-17, para. 22).

C. Persons with disabilities

76. In 2006, Portugal adopted the Disability Act, which prohibits discrimination against persons with disabilities and promotes their full participation in society. It also has a national strategy on disability. The Special Rapporteur was informed,, however, that persons with disabilities are subject to a number of barriers with regard to the enjoyment of the right to adequate housing. The Ombudsperson confirmed that accessibility remains a

[23] Ibid., p. 6.

[24] Manuela Mendes et al., "Estudo nacional sobre as comunidades ciganas", December 2014, p. 28.

major challenge in Portugal, that discrimination against person with disabilities within the housing sector is common, and that persons with disabilities continue to face many barriers in living independently, notably because of the lack of a national strategy to facilitate and support independent living in the community rather that in institutions, as provided for in article 19 of the Convention on the Rights of Persons with Disabilities (CRPD/C/PRT/CO/1, paras. 38-39).

V. Access to justice

77. The rights to adequate housing and to non-discrimination are meaningless without access to justice and to legal remedies for their violation. The Special Rapporteur commends Portugal for its mechanisms to ensure that the State complies with the right to adequate housing, but regrets that recourse is not often made to them.

78. One positive example was a court decision by the South Administrative Central Court, which recognized that the protection of basic housing needs should prevail over a generic legalistic interest in ensuring compliance with the law, even if it results in the loss of public revenues. In the case in question, in 2011, an applicant was notified of the decision to terminate the rental contract of a social housing unit in Lisbon owing to arrears owed in rent, with a period of 90 days to vacate the unit or face eviction. In June 2012, the Court recognized that the housing unit was actually the primary residence of the applicant and her family, which included two children, and ordered that the decision on the eviction be revoked, noting that the family did not have any other proper vacant housing to which they could move nor the economic means to pay for rent at the current market value.

79. The Ombudsperson is, in accordance with the national human rights institution, and has had "A" status since 1999. Pursuant to article 23 of the Constitution, the Ombudsperson may receive complaints against actions or omissions by public authorities, and present to the competent bodies "such recommendations as may be necessary in order to prevent or rectify any injustices". The institution plays an important role in protecting and promoting human rights, has submitted reports to treaty monitoring bodies and uses international human rights law in its work.

80. With regard to social housing and local public health services, the Ombudsperson has submitted a number of recommendations to social security services and municipalities. In 2015, for example, the Ombudsperson recommended that the Municipality of Amadora suspend the eviction and demolition of unauthorized constructions and houses developed in public land without a permit. He noted that some households would be displaced or rendered homeless if the Municipality continued to demolish homes without providing alternative accommodation. The Ombudsperson recommended that the Municipality, State and other institutions resettle all households without alternatives.[25]

81. Portugal has ratified several regional human rights instruments, and it is under scrutiny of the European Court of Human Rights and the European Committee of Social Rights. For example, in 2010, the European Roma Rights Centre brought a collective complaint against Portugal to the European Committee of Social Rights, alleging precarious and difficult housing conditions in several Roma settlements, in violation of articles 30 and 31 of the European Social Charter. The Committee found violations of article E (non-discrimination) in conjunction with articles 16, 30 and 31(1). In response to the complaint,

[25] See A/HRC/22/67, case PRT 1/2012 and reply from the Government of 11 September 2012, and at A/HRC/24/21, case PRT 1/2013 and reply from the Government of 10 July 2013.

Portugal developed the National Roma Communities Integration Strategy (2013-2020) (see para. 70 above).

VI. Conclusions and recommendations

82. **Portugal has a strong foundation upon which to implement the right to adequate housing as a central feature of a just and democratic society. Article 65 of the Constitution, together with several housing laws and programmes, reflects a general understanding of the importance of housing and some of the needs witnessed in the sector. This has, however, been tempered by the financial crisis and the measures subsequently taken to address it.**

83. **The brunt of the austerity measures taken to revive the economy – such as the downsizing of the public service and the withdrawal of the State from social protection – has been borne disproportionately by those who were already living below the poverty line or who were at risk of poverty.[26] At the same time, the measures have led to the emergence of the "new poor", who face social exclusion largely owing to the deterioration of their living conditions, and in particular housing; formerly middle-class homeowners, with mortgages or utility arrears, pensioners or persons who relied solely on a salary, and have lost their jobs.**

84. **While there are signs of economic recovery, many people still face serious long-term challenges: unemployment, wage cuts (particularly in the public sector) and an overall high risk of poverty, with direct consequences for their access to affordable housing. The high degree of inequality affects everyone in the country, not only the poorest. When inequality leads to housing exclusion, the sustainability of economic recovery and the viability of policies and programmes implemented in its name are called into question. At the same time, policies such as golden visas or short-term tourist rentals should be strictly monitored and regulated to ensure they do not have a negative impact on the affordability of housing and do not deepen inequality and raise the possibility of housing exclusion.**

85. **Some communities in Portugal live in particularly inadequate housing conditions, such as the Roma and people of African descent. It is important to recognize that, regardless of the economic conditions in the country, the right to adequate housing must be legally protected and implemented, particularly for those in vulnerable situations.**

86. **In the light of the above conclusions, the Special Rapporteur recommends that the national and subnational Governments:**

(a) **Adopt a national housing framework law formulated in consultation with all stakeholders and based on international human rights principles. Such a law would provide consistency and coherence in the State's housing policies and programmes. It should include measureable goals and timelines, a focus on those in vulnerable situations, and the distribution and coordination of responsibilities between different levels of government, with effective monitoring, accountability and claiming mechanisms. A national housing framework law of this type could guarantee that the various policies and programmes in place reach populations experiencing the worst housing disadvantage such as Roma, people of African descent, women fleeing**

[26] In 2015, 25.1 per cent of the population were considered at risk of poverty.

violence, persons with disabilities, children, young people and all those who are poor or who belong to the "new poor";

(b) Commit to ending homelessness as a priority, in keeping with the Sustainable Development Goals, to leave no-one behind and to ensure adequate, safe and affordable housing and basic services for all, and the New Urban Agenda;[27] to this end, they should ensure that the lessons learned from the first national strategy on homelessness are taken on board in a new strategy, including by ensuring a participatory process for its development, and ample consultations with specific municipalities that engaged in implementing the strategy; and ensure that the new strategy encourages preventive measures, not just crisis intervention;

(c) Assess and address housing conditions in all informal settlements on an urgent and priority basis, including for Roma communities and communities of people of African descent, in keeping with the goals outlined in the national housing strategy;

(d) Prevent demolitions and evictions that result in homelessness. Children should not be removed from their parents for lack of adequate housing. Plans for disadvantaged communities should be developed and implemented in consultation with the populations affected, and should include key human rights principles, such as security of tenure, in situ relocation, access to basic services, including water, sanitation and electricity, affordability, and dignified living conditions.

87. The Government should work closely with the Municipality of Porto and the residents of the *ilhas* to ensure all those residing in them are provided with adequate accommodation, whether through refurbishment or relocation to affordable long-term housing, and allocate sufficient financial resources to that end.

88. Central, municipal and autonomous regional governments should develop a common vision for cities in Portugal with a view to ensuring they are places of inclusion rather than predominantly for the affluent or tourists, and to ensure the effective implementation of the rights to adequate housing and to non-discrimination for long-term residents as a priority. Better coordination between levels of government, including adequate flow of resources, must be achieved.

89. Governments should adopt new regulatory mechanisms to prevent displacement through "touristification". They should examine effective policies and practices in other cities around the world facing similar situations with a view to protecting individuals from the negative impact of this phenomenon and of property speculation.

90. The Special Rapporteur recommends that the national and regional authorities moreover:

(a) Review eviction procedures, including administrative measures recently adopted, to ensure that they adequately protect the rights of tenants, particularly not to be evicted into homelessness, and ensure that they have access to legal aid or other legal support to challenge evictions in court;

(b) Conduct an assessment of the actual need for social housing, subsidized housing and/or rent-controlled housing throughout the country; The Government should then ensure the supply of affordable housing (defined in terms of cost burden relative to income, not in terms of market value) for those with the lowest incomes and those on waiting lists.

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[27] General Assembly resolution 71/256, annex.

91. **Existing social housing stock should be kept in good repair, in keeping with the characteristics of adequate housing as defined by the Committee on Economic, Social and Cultural Rights in its general comment No. 4 (1991). A system must be in place to ensure the efficient allocation of vacant units in social housing, in the light of the long waiting lists.**

92. **Long-term rentals should be promoted as an alternative means of access to affordable housing. Short-term rentals targeting the tourist sector should be regulated, and their impact on affordability properly assessed with a view to combating practices that result in the exclusion of long-term residents of specific neighbourhoods.**

93. **Housing programmes such as those proposed by housing cooperatives for new housing and urban upgrading, or those emerging from participatory budgeting, strengthen real and effective participation of the population directly concerned in the design and implementation of housing policies, and should therefore be encouraged. Collective and cooperative forms of ownership and use of land and housing should also be promoted.**

94. **Serious consideration should be given to the identification of vacant land or, when possible, to the expropriation of land for public use, so as to ensure security of tenure for "self-built" neighbourhoods and to enhance the availability of land for social housing.**

95. **National and subnational authorities should enhance the use of maximum available resources in the housing sector, including by ensuring that revenues from policies such as golden visas, property taxes or tourism taxes are invested with the aim of providing access and truly affordable housing to the most marginalized sectors of society.**